IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5210 OF 2007

Anjana Shivaji Kesare & Ors.... ....Petitioners.
V/s
Smt.Gangubai Tukaram Kochare & Anr..... ....Respondents.

Mr.Amit Borkar, Adv. For the petitioners.

CORAM: A.P.DESHPANDE, J.
2/8/07

PC:

The respondent No.1 herein filed a suit for declaration that the sale deed procured by the respondent No.2 herein from her was by using deceitful and fraudulent means. The trial Court framed the issue "as to whether is it proved that defendant No.1 has got executed the sale deed dated 27.8.02 in his favour relating to suit property by deceiving her the plaintiff." As the suit itself was filed with a view to set aside the sale deed on the ground that the same was procured by defendant No.1 by deceitful means it is clear that the plaintiff did not dispute the execution of the sale deed. It is also so stated in the application moved by the petitioner under Order 41 Rule 27 of Code of Civil Procedure before the Appellate Court that in the cross examination the plaintiff has admitted the execution of sale deed and thus the sale deed was exhibited before the trial Court and considered by the lower Court. In the regular appeal filed by the petitioner an application was moved under Order 41 Rule 27

for examining the scriber, attesting witness and the sub-Registrar and it is stated in the application that the appellant wants to examine the said witnesses with a view to prove the document of sale deed. The exercise on the part of the petitioner to examine the said witnesses is futile in as much as the execution of sale deed is not in dispute. What is in dispute is the manner in which the same is got executed by defendant No.1 from the plaintiff. My attention is invited by the learned counsel for the petitioner to the observations made by the trial Court at the end of para 10 wherein it is held that the burden lies on the defendant No.1 to prove as to how the sale deed between him and the plaintiff is valid and executed without practicing any fraud on her. The correctness of the said observation is already the subject matter in the appeal pending before the First Appellate Court and the petitioner is bound to assail the same before the First Appellate Court. The First Appellate Court has rightly held that the petitioner was aware about existence of evidence in relation to the execution of sale deed and attending circumstances and hence has rightly rejected the application under Order 41 Rule 27 on the ground that the petitioner's case does not fall within the exceptions. Perused the order. Same does not call for interference. Hence writ petition is summarily dismissed.